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### GET ANSWERS TO YOUR QUESTIONS:

How do I protect my health, home, lifesavings, family and legacy?

Why is an outdated will worse than no plan at all?

How can I be sure people I trust will make medical and financial decisions for me, if I cannot?

How can I control the care I get (and do not get) in a medical emergency?

How can I protect my kids' inheritance from divorce, bankruptcy, and their own poor decisions?

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# The Michigan Elder Law Reporter™

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## KEEPING IT SHORT & SNAPPY!

# LETTERS LIGHTNING ROUND

## GOOD STUFF, NO BY-PRODUCTS

(WARNING: TYPOS INTACT, NOT LEGAL ADVICE)

### OH, WHAT A TANGLED WEB WE WEAVE, WHEN FIRST WE PRACTICE TO DECEIVE!

What if father had 25% ownership with 3 of his children 5 years ago? Can Medicaid take the house for 5 year lookback?

Father is going to rehab center after having had surgery. Medicaid was just approved, should we just try to use Medicare only and pay for his rehab stay? He owned the house with 3 of his children but only removed his name from title 2 years ago.

### SOMETHING IS ROTTEN IN THE STATE OF DENMARK!

OR  
THE REST OF THE STORY...

**1. Give Stuff Away. Wait 5 Years. No Problem.** Dad deeded his homestead to himself and 3 kids. Dad deeded the homestead to himself and the kiddies more than 5 years ago. For Medicaid purposes, Dad gave away 75% of the property and now owns 25%.

If we stop here, the result is clear. Dad's gift of the homestead to the kiddies will not result in a penalty against him because it happened more than 5 years (60 months) ago. Medicaid only looks back 5 years to see if Dad gave anything away. Now he can get Medicaid for his rehab... no problem!

**2. Give Stuff Away. Don't Wait 5 Years. Problem.** Medicaid "Divestment" is the "transfer of a resource for less than fair market value." When Dad gave the kids 75% of the homestead for free, he divested 75% of the homestead. Divestment creates a penalty period when you apply for Medicaid. But if you wait long enough, Medicaid won't "look back" that far and doesn't care. If you do not wait long enough, Medicaid cares. Really cares. And will hit you with a Penalty Period.

**3. Penalty Period.** "What's a 'Penalty Period?'" you ask? Great Question!

Somebody gives something away and then applies for Medicaid within the "look back" period. Medicaid says "No so fast! If you still had that house/car/boat/cottage/money you could pay for your own long-term care! And now we're gonna make you pay for the long-term care that you need with the money that you would still have if you had not given it away!" Confused yet?

If you hadn't given your stuff away you could have paid for long-term care for some period of time. How long a period of time? That is the Penalty Period.

How does Medicaid calculate the Penalty Period?

Medicaid pretends that you have cash equal to the amount of stuff you gave away. Then Medicaid pretends that you were using that cash to pay for a skilled nursing facility.

Right now, in 2023, Medicaid says that it costs about \$10,000 per month for skilled care. (It costs more than that, but what do you want?)

So, if Dad's house was worth \$400,000 and he put 3 kids on the deed, Dad gave

away 75% or ¾ of his homestead. Dad gave away \$300,000. For each \$10,000 of value, Dad gets a 1-month Penalty Period. That means Dad would have a 30-month Penalty Period if he applied for Medicaid within 5 years of putting the 3 kids on the deed.

Since Dad put the 3 kids on the deed more than 5 years ago, there is no Penalty Period for the first divestment.

**4. The Plot Thickens.** However, we've got another fact in this pattern: "but only removed his name from title 2 years ago." What does that mean? It means that although Dad gave away 75% of the homestead 5+ years ago, he gave away the remaining 25% only 2 years ago. That's going to create a Penalty Period.

If Dad's house was worth \$400,000 and he gave away 25% or ¼ of it, then Dad was giving away \$100,000, two years ago. At \$10,000 per month, that means Dad now has a 10-month Penalty Period.

Q: When does the Penalty Period begin?

A: When Dad is broke (under \$2000 to his name) and in a nursing home or getting skilled nursing care.

**5. What About The Nursing Home?** Dad has nothing left. Medicaid won't pay. How can the nursing home survive if nobody's paying for Dad's care? It cannot survive. And the nursing home does not like when it does not get paid. Naturally, the nursing home will sue!

**6. Going After The Kids!** Maybe the kids thought it was a good deal to get Dad's house. But if Medicaid won't pay and Dad's flat broke, the nursing home will be unhappy. The nursing home will sue Dad. But Dad has nothing. So now the nursing home will sue the kids because the reason Dad has nothing is because the kids got the house. This is what we call the Doctrine of Fraudulent Transfer.

**7. LifePlanning™ Makes Everybody Happy.** Dad wants to give the homestead to the kids. The kids want to get the homestead. Dad wants the nursing home to get paid. The nursing home wants to get paid. Dad doesn't want to pay twice for long-term care. LifePlanning™ would have protected the homestead for Dad and the kids while providing Dad's long-term care using Dad's paid-in tax dollars. Everybody wins.

**8. Failure To Plan Makes Everybody Sad.** Dad is unhappy with paying twice. Kids are unhappy with getting sued. Nursing home is unhappy with having to sue. Lawyers are happy. Almost everybody loses.

**9. I Wonder...** Dad was on Medicaid according to the email. How did Dad get on Medicaid without telling Medicaid about the deeds and the transfers to the kids? Somebody didn't tell the truth on the Medicaid application, that's how. This needs to get fixed, pronto! And that's the rest of the story.

What happens if parent didn't have will witnessed?

One of my parents (divorced, never remarried) just passed away and didn't get the will they created signed by witnesses. Had just under 50k in cash assets and gave his possessions to my brother before he passed (no real estate). So 2 questions:

1) does his estate qualify for no probate given his assets being under 50k with an "invalid" will?  
2) does his having a will, even though unwitnessed, qualify as having a will and need to go to probate?.

### CAN I GET A WITNESS?

TO PROBATE, OR NOT TO PROBATE... IS THAT REALLY THE QUESTION?

"Does his estate qualify for no probate given his assets being under 50k with an "invalid" will?"

There is a "small estate" procedure that does not involve full-fledged probate when the assets total less than \$25,000. This procedure allows reimbursement of the burial expenses to the person who paid those expenses and distribution of the remaining assets to the beneficiaries as if there were no will.

If there was a co-owner or beneficiary on the \$50,000 account, that person would take the money. Because you are writing in, we are forced to assume that there is no co-owner or beneficiary.

To the question, this situation does not qualify for the small estate procedure because there is too much money. You must use the regular probate process.

But it is curious... what does the "invalid" Will have to do with anything? How was the Will "created"? Does the Will alter the "intestate" distribution provided by law? What difference does it make? This is why discussion of these matters is essential... to develop the facts.

"Does his having a will, even though unwitnessed, qualify as having a will and need to go to probate?"

The \$50,000 must go through probate, but what difference the Will would make is anyone's guess, given that the writer did not tell us what difference it would make.

So why bother answering? Because this situation is similar to the recently-decided Aretha Franklin case. The Queen of Soul had a written, witnessed Will. Apparently, she locked it away in a cupboard. But Lady Soul was not finished expressing her testamentary intent. She wrote out a few more pages of a "Will." Whether these pages remained in a notebook or were torn out is not clear from the newspaper accounts. All agree that the pages were found under the couch cushions. Without benefit of notary. Or witnesses.

Still, the Probate Court accepted these handwritten pages as evidence of Aretha's intention to modify the earlier, properly executed Will.

A Court may dispense with rigid adherence to legal definitions when it determines it has discerned a decedent's dispositive desires by clear and convincing evidence. Convince the Court and the Court will wing it.

Here, they have to go through probate because of the amount of money. If the distribution plan were unusual, that would be another reason.

### HOW LONG DO THEY EXPECT US TO MEEKLY GO BROKE?

SOCIAL SECURITY DOESN'T DEMAND YOUR LAST NICKEL

MEDICARE DOESN'T TOUCH YOUR LIFESAVINGS

SO WHY DO YOU HAVE TO GO BROKE FOR LONG-TERM CARE?

WHEN IS ENOUGH ENOUGH?

Traditional estate planning is concerned with avoiding probate, saving taxes, and dumping your leftover stuff on your beneficiaries. After you die. Why doesn't anybody care what happens to you

while you are alive? What good are your lifesavings to you when you're dead? How does traditional planning help you? Stupid.

Traditional estate planning fails because the overwhelming majority of us will need long-term skilled care. 70% of us. For an average of 3 years. And we will go broke paying for it.

Is it surprising that thousands of recreation properties: cottages, cabins, hunting land, are lost to pay for long-term care? Why is your estate planner hurting you and your family? It is evil intent? Ignorance? Negligence? Fear?

LifePlanning™ defeats Nursing Home Poverty. Keep your stuff. Get the care you have already paid for. Good for you. Good for your family. Good example for society,

When my mother suffered from the dementia which led to her death, over 10 years ago, their estate plan preserved their lifesavings. Mom's months in the nursing home did not mean Dad's impoverishment. Dad spent the last years with security and peace of mind.

### Is Now A Bad Time For A Real Solution?

Have you thought this all the way through? Which account will you use when your spouse's \$15,000 nursing home bill for the 1st month shows up in your mailbox? Which account for the 2nd month? Being single is no escape... how will your loved ones pay your bills? Do you already have an answer to this problem? Maybe you do not see this as a problem at all.

Peace of mind and financial security are waiting for everyone who practices LifePlanning™. You know that peace only begins with financial security. Are legal documents the most important? Is avoiding probate the best you can do for yourself or your loved ones? Is family about inheritance? Or are these things only significant to support the foundation of your family?

Do you think finding the best care is easy? Do you want to get lost in the overwhelming flood of claims and promises? Or would you like straight answers?

Well, here you are. Now you know. No excuses. Get information, insight, inspiration. It is your turn. Ignore the message? Invite poverty? Or get the freely offered information. To make wise decisions. For you. For your loved ones.

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